UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JOHN COTTAM,

Plaintiff,

v. 16 CV 4584 (RJS)

GLOBAL EMERGING CAPITAL GROUP, LLC, ET AL.,

Defendants.

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New York, N.Y.
September 14, 2016
2:37 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

GOTTLIEB & JANEY, LLP
Attorneys for Plaintiff
BY: DERRELLE M. JANEY
JUSTIN F. HEINRICH

K&L GATES, LLP (NYC)
Attorneys for Defendants 6D Global Technologies, Inc., 6D Acquisitions, Inc., Tejune Kang
BY: PETER N. FLOCOS
MAX E. KAPLAN

(In open court)

(Case called)

THE COURT: Okay. Have a seat. Thank you. Let me take appearances for the plaintiffs.

MR. JANEY: For the plaintiff, John Cottam, Gottlieb and Janey by Derrelle Janey. Good afternoon, your Honor.

THE COURT: All right. Good afternoon to you. And with you?

MR. JANEY: I'm joined at counsel table by my colleague, Justin Heinrich.

THE COURT: Okay. Mr. Heinrich and Mr. Janey, good afternoon. And for the defendants?

MR. FLOCOS: Good afternoon. Peter Flocos from the firm of K&L Gates, representing the two 6D entities, who are defendants, as well as Tejune Kang, who's also a defendant. And with me is my colleague, Max Kaplan.

THE COURT: All right. Good afternoon to each of you.

So the other folks are in arbitration, doing whatever they're doing. What's going on there? Can you tell me, Mr. Janey?

MR. JANEY: Sure, your Honor. First, I think it's appropriate, by way of background, if I might. Earlier this year, with respect to the defendants who are going to be a part of the FINRA arbitration, we had requested Dr. Cottam's customer file from the broker dealer Radnor. We did not

receive the customer agreement that would arguably compel him into arbitration until we commenced this proceeding.

It simply was not a part of the earlier packet of documents we received prior to commencement; otherwise, we would not have named them in this action. We had been in constant contact with their counsel. They understand that that arbitration filing is imminent. We anticipate that filing will occur next week.

THE COURT: All right. So you guys will keep me posted but, obviously, what happens there might be relevant to what happens here.

MR. JANEY: We certainly agree with that, and we're prepared -- I know your Honor has asked certain questions of us that we're prepared to speak to whenever your Honor would like us to. But we certainly, for the plaintiff, take the position that there, inevitably, will be material information and evidence that will be relevant to the District Court proceeding.

THE COURT: So let me ask the defendants. The defendants want to make a motion to dismiss, and so is there any advantage to just waiting to see how it goes in the arbitration, and maybe that will make our job easier. What do you think of that?

MR. FLOCOS: Respectfully, your Honor, I would say that -- and I think both parties view it this way, because both

parties, as stated in our joint letter to the Court, both parties are of the view that it would be better to adjudicate the motion to dismiss first and find out the answer to that.

I think that it's possible that this case may go away in its entirety after the arbitration is concluded, but we don't know that. I think that's speculative, and in the meantime, certainly from the vantage point of the 6D defendants, we think we have clean grounds for dismissal here and that the Court should just address that now, with a bird in the hand, rather than two in the bush, if you will.

THE COURT: All right. Well, let's talk about the contemplated motion. So there are fraud claims and there's a contract claim.

MR. FLOCOS: Right.

THE COURT: It's difficult for me to see -- well, let me take a step back. This is a pre-motion conference, as well as an initial conference. I never tell a party they can't make a motion. That's not the purpose. The purpose is not to discourage motions. The purpose, frankly, is to kick the tires, give me an opportunity to consider arguments and to prepare for arguments, to ask some questions and, hopefully, to streamline the process, to make it more efficient, to give guidance to, certainly in this case, pretty sophisticated practitioners about sort of what I think or at least what I initially think.

I'm not going to rule today, but I share at least some of my thoughts or observations. You're free to talk me out of it, or to tell me why I'm wrong or what I've missed, but I'm not going to rule today. Sometimes I will tell you, I think I'm going to rule this way and then, you know, that will inform your decision going forward. So that's the spirit of this thing and that's why we do it.

So sometimes I think some lawyers think why do we have these pre-motion conferences? This judge is just throwing up walls between us and our right to make motions. At least in my case, that's not the purpose at all. It's really, I think, to hopefully make the more process more efficient, and I find it is helpful to me, believe it or not. Sometimes I find the pre-motion letters much more valuable than the briefs because it just forces you to condense and to really burrow into the key facts and the key authority as opposed to, you know, going on for 25 pages or more, in some cases.

MR. FLOCOS: Cutting to the chase. We understand and appreciate your Honor's comments.

THE COURT: So let's then talk about it. So we've got a contract claim, which seems to me to sort of cover the whole ballgame here. It's hard for me to see how the fraud claim is really a fraud claim at all. If the plaintiff is right on the contract, then they've won and will have gotten pretty much everything they wanted out of the fraud claim; is that correct,

Mr. Janey, or am I missing something?

MR. JANEY: Well, in the first -- yes. However, in the first instance, your Honor, our position is that these claims can be credibly argued certainly at the pleading stage, in the alternative.

THE COURT: Okay. But it's the same damages either way, right?

MR. JANEY: Yes, your Honor.

THE COURT: All right. So then let's focus on the contract claim. I have read this contract about 25 times now. I think I understand it. It's interesting. It's not beautifully written, candidly. There's a lot of terms that are defined, and then different terms are used later in the agreement, reverse split and then there's a reference to the stock split, which I assume is a reference to reverse split, but who knows. There's a reference the financing exchange, but it's later then defined as the financing security exchange. I assume those are the same things, but it's a lot for me to see a document involving sophisticated parties about pretty sophisticated investment vehicles that sort of have those types of mistakes or inconsistencies.

But at least as I see it, or at least as I think I read this thing, we've got these whereas clauses that sort of set the stage for the offering, and the third whereas clause is the one that looked at least most interesting to me because

what it seems to be saying is that, in that nanosecond, in that metaphysical moments before or at the same time that the offering is completed, the share exchange is executed, and the financing exchange is -- financing security exchange is completed.

At that, I guess the nanosecond before that moment, CleanTech is going to be capitalized with 536 million shares. Of those shares, 17 million are sort of designated for the investors in the offering. That's what they're going to go and then, sort of at that moment, that metaphysical moment, there's then a one-to-one exchange of the company, 6D Acquisitions' shares for 6DT or Global shares, and there's also a metaphysical moment, maybe the nanosecond right before that, when CleanTech shares get converted into 6DT or 6D Global shares.

And it seems to me that there are no splits or reverse splits or anything that's taking place before then that is going to affect the one-to-one exchange that is contemplated in the agreement. But it also seems to me that the one-to-one exchange is premised on there being 536 million shares of CleanTech stock; no more, no less. So that's what it looks like to me, and the facts here are that at the moment of the exchange, how many CleanTech shares were there, or right before the exchange? Is it 536 million, or was it less than that?

MR. FLOCOS: Your Honor, if I can address that --

THE COURT: Sure.

MR. FLOCOS: -- for the 6D defendants. I think your Honor put your finger on it.

THE COURT: I'm not as dumb as I look, but Janey may disagree with that on a lot of levels.

MR. FLOCOS: I think that the heartbeat of this claim is what your Honor articulated at the beginning, and perhaps I am at risk for conceding this at the motion-to-dismiss stage, but I would concede upfront that I, too, upon reading the subscription agreement, it is not necessarily a model of clarity at times, but I think for purposes of the motion to dismiss, coupled with what is a matter of public record in SEC filings, I think your Honor has what he needs.

The complaint acknowledges that this share capitalization table that your Honor pointed to, if your Honor flips to the front of the documents, they are dated June 17th, and the complaint acknowledges that, that although physically Dr. Cottam is given the documents later, that the date of the offering documents themselves are June 17th.

THE COURT: Right.

MR. FLOCOS: So this is the share capitalization as of June 17th.

THE COURT: Well, who cares, because it says: Upon raising the maximum offering of 5.1 million, at that point, CleanTech will be capitalized as follows. So what they do in

June and July and August, they can go up, they can go down, they can split three ways, and they can reverse split two ways, and they can do whatever they want, it seems to me. But when the whistle is going to blow at the point of the offering being completed, the share exchange and the financing exchange taking place, it seems to me this is what the capitalization is going to be. Am I wrong about that?

MR. FLOCOS: Your Honor, I think so because it was --

THE COURT: Okay.

MR. FLOCOS: -- thereafter, and I think this is the nub of the dispute, it was thereafter --

THE COURT: Thereafter what? After the offering was completed or after June 17th?

MR. FLOCOS: Well, after June 17th but before the share exchange but before this group of transactions was completed.

THE COURT: You concede -- let me interrupt you for a second -- that these transactions all occur literally at the same time, or maybe in an order, but they are almost contemporaneously. They have to be.

MR. FLOCOS: My understanding is I think they are. I think the word that the corporate people use is substantially contemporaneous.

THE COURT: Okay. That's what it reads like to me, too. Okay. So keep going. I interrupted you, sorry.

MR. FLOCOS: We further agree that the one-to-one exchange ratio is predicated on 536 million shares.

THE COURT: Well, it seems to me that the entire transaction, or series of transactions is predicated on that. Maybe I'm wrong, but you have the last whereas clause on Page 2 which says what CleanTech's capitalization will be upon raising the maximum offering of 5.1 million.

It then says on the next page, it will be a condition in the closing of the share exchange that the company complete the offering. And so it seems to me that the contemplation is that the offering will be completed, and these shares -- or the capitalization of CleanTech will be this. It sounds like that's not what happened, and I'm not sure what the remedy is when that doesn't happen. But I just want to make sure I'm not missing something.

MR. FLOCOS: Well, I'm not sure whether you're missing something or I'm missing something. I can tell you what, from the defendant's vantage point, this comes down to is that the exchange ratio, the one-to-one was based on an amount of shares that was later subjected to a reverse split.

THE COURT: Later subjected to a reverse split. Later --

MR. FLOCOS: Subsequently.

THE COURT: What do you mean by later? After the transactions took place? Because it seems to me that's fine,

or before the transactions took place?

MR. FLOCOS: It was --

THE COURT: I think you're saying before, though, right? You're saying that there was, I think, a July and then a September reverse or a split that --

MR. FLOCOS: The document -- Let's talk about the document.

THE COURT: Let's do that.

MR. FLOCOS: Then let's talk about the SEC filing. The document says that there may be a split upon or after the closing of a share exchange.

THE COURT: Yes, upon or after.

MR. FLOCOS: Right.

THE COURT: So if the thing happens, they would get one for one and sort of immediately, almost substantially simultaneously, they announce a stock split or reverse. Then the investors here get -- they are subject to the same reverse as every other shareholder, but that's already after they got their one for one, right?

MR. FLOCOS: That is according to the document, yes.

THE COURT: Okay.

MR. FLOCOS: Okay. But after the date of this document, June 17th --

THE COURT: June 17th.

MR. FLOCOS: -- and, indeed, with respect to one split

after the time that Dr. Cottam says that he physically received this document, which I think he says he physically received it in September, there were two publicly announced reverse share splits. Okay?

THE COURT: Reverse share splits in what stock?

MR. FLOCOS: In CleanTech.

THE COURT: In CleanTech stock.

MR. FLOCOS: Yes, in CleanTech stock, but that is ultimately -- When the share exchange took place --

THE COURT: Okay, but what it seems to me that you're really arguing is that even though that whereas clause at the bottom of Page 1 of the subscription agreement was not complied with --

MR. FLOCOS: Yeah, what I'm arguing --

THE COURT: -- it was lower or higher, in this case it was actually lower, the investors, Dr. Cottam and others, are locked into the ratio that exists in the numbers reflected in Page 2. So if there's twice as many shares in CleanTech, then the shares of the investors in the offering should be twice as many too. That's what you're saying? There should be 34 million, if there were actually a billion and change shares.

MR. FLOCOS: What I'm arguing is that, as I understand it, Dr. Cottam's theory is essentially that he was entitled to X shares, okay, notwithstanding the fact that there was a reverse stock split that changed the mathematics such that --

he's essentially arguing that he was entitled to, by my count, you know, 6.9 shares for the price of one, is essentially how he is interpreting this; that the ratio is simply fixed in stone. The reverse stock split --

THE COURT: Wait. He's arguing that the ratio is fixed in stone? You're arguing that the ratio is fixed in stone, it seems to me. He's arguing that he gets one share of the new CleanTech stock, which is the 6D Global or 6DT, for each share that he has in 6D Acquisition, right? That's what he's arguing.

MR. FLOCOS: Correct.

THE COURT: Hard to argue with that. That's exactly what this thing says.

MR. FLOCOS: But by the time he got his shares, and it had been publicly announced, the company underwent -- and as discussed in the document, the company underwent two reverse stock splits so that it's our position, respectfully submitted, that no reasonable investor could believe that, having undergone these two reverse stock splits so that now instead of there being seven shares outstanding, there was one share outstanding, that the investor was nevertheless entitled to the original amount of shares. That would result in an enormous windfall to the investor that I don't think parties could have ever reasonably contemplated.

THE COURT: Well, it seems to me that, just from where

I'm sitting, that this contract doesn't say a thing about what the remedies will be if CleanTech at the time of the offering, at the time of these transactions, actually has a different capitalization than what is set forth here.

So your argument, I think, is probably going to be based on extrinsic evidence and logic and reason, that any reasonable investor would assume that the ratio that -- the percentage of the CleanTech stock that is designated for the investors in the offering is what ought to be the same percentage when the exchange takes place. That's not crazy to me, but it's not obvious to me.

MR. FLOCOS: Your Honor, respectfully, I don't think that is a -- I really don't think --

THE COURT: You don't have to say "respectfully" because I have no reason to think that you would talk to me other than respectfully.

MR. FLOCOS: I don't think that is a fact question. If I am misinterpreting Dr. Cottam's theory, I'm sure Mr. Janey will set us straight in a moment here, but I don't think there is any dispute that he is arguing that he is entitled to seven shares of the --

THE COURT: No, he's not saying he is entitled to seven shares. He's saying he's entitled --

MR. FLOCOS: And my math may be --

THE COURT: -- to one share.

MR. FLOCOS: -- a little bit off. Maybe it's five shares for the price of one, but when you multiple out the reverse share splits, that's what it comes down to. So that we're taking a document that admittedly is somewhat sloppy, but who would have ever agreed to that, as an investment thesis? Do we really need discovery? We're going to spend resources on discovery and summary judgement motions to discover that, indeed, what parties would have ever entered into a windfall agreement of that kind? What the remedy is --

THE COURT: Well, look, this is because you guys -- you guys, CleanTech, rather than comply with what's in the last whereas clause on the first page, even though it's page No. 2, it's the first real page of the agreement, you're saying that because they were pretty careless, is what it seems to me and they went into the transactions with fewer shares than what is specified here in the capitalization breakdown, that they should be sort of saved from the stupidity of that.

I guarantee you, if they had split the other way, so that there were twice as many shares, Cottam and everybody else would have just pulled out of the subscription agreement. Right? They would have said, this is not the agreement we signed onto. We don't want any part of this because you just watered down our shares. You really breached the agreement.

And so it's kind of puzzling to me that CleanTech could have put themselves in this situation by their own

choice. I'm sort of stunned. They may have a great malpractice action against somebody, but I'm not sure why Cottam has to say, well, we'll fix this for you. I'm not sure.

MR. JANEY: Your Honor --

THE COURT: Yes, let's let Janey get a word in here.

MR. JANEY: You know, your Honor, just a couple of things. No. 1, I think that the Court, from our perspective, understands the controversy squarely.

THE COURT: It took me all night to do it.

MR. JANEY: I will tell you --

THE COURT: We were talking about this after midnight.

MR. JANEY: I'm not as bright as your Honor because, in this case, I've been reading and rereading certainly more than 25 times, and I had to have my colleagues read and reread and try to explain it to me.

But the sum and substance of it is, from our perspective, with all due respect to counsel, the date stamp on the cover of the document is irrelevant. It's not an operative term of this contract. The operative term, as your Honor is describing, is what the shares were supposed to be, what the one-to-one ratio was meant to be, how many shares would happen after the offering.

The offering is clearly defined for the purposes of the agreement. This controversy is about the agreement. Now, the quick math that counsel was doing, I must admit, I couldn't

quite keep up with, but very, very simply, Dr. Cottam was looking for the one-to-one exchange. He bought 58 units in the SPV, which is -- and correct me if I'm wrong --

THE COURT: It's 50,000 shares per unit.

MR. JANEY: -- 50,000 shares of the public company. This was to happen contemporaneously. Contrary to counsel's position, this notion of the reverse splits with respect to understanding the contract is a red herring.

In other words, with respect to what Dr. Cottam was supposed to receive, the notion of reverse splits, which are not contemplated in the main of this agreement, cannot now retroactively be applied to what Dr. Cottam was supposed to receive and that he should now be satisfied with. And a view that, well, there were these reverse splits and he should be -- despite what the contract says, he should be satisfied with what he got.

THE COURT: No, I get what he's saying. What he's saying is that if CleanTech breaches this agreement or if they monkey around with the share percentages at the bottom of Page 2, they can maybe monkey around with some of these, but they don't get to monkey around with the 17 million.

MR. JANEY: Well, that's right. So with respect to the dates, because I understood your Honor to be asking about some of the dates, just to talk about the reverse splits for a moment, at least from our perspective so that we can put them

squarely. The subscription agreement did not disclose that there were reverse splits, the first one taking place on July 14th.

THE COURT: Reverse splits in CleanTech?

MR. JANEY: Reverse splits in CleanTech. And that there was a second one in September 25th of that year, four days prior to the exchange. Dr. Cottam had already paid his money.

THE COURT: Look, I assume Dr. Cottam couldn't care whether they split 19 times, 20 times, no times. I think I assume Dr. Cottam, like every other subscriber, assumed that CleanTech would make sure that on the day of these transactions, the total capitalization was going to be what's at the bottom of the page.

MR. JANEY: That's correct.

THE COURT: That they had to do that. I think that's presumed, and I would argue a requirement of the transactions going forward.

MR. JANEY: Correct.

THE COURT: I think the question that I would have for you, though, is when that requirement wasn't satisfied -- in other words, what's at the bottom of Page 2 didn't happen, it's a smaller number -- you're saying, well, we still get 17 million shares even though there might only be 200 million total shares.

And you're saying, yeah, that's right because, tough luck, you guys at CleanTech are a bunch of idiots. And they're saying, well, it's just not the spirit of this thing. What we really meant to say at the bottom of Page 2 was that this would be the proportional breakdown.

If they had done that, then I think they'd win. If the bottom of the page said that CleanTech will be capitalized as follows, 49.2 exchange shares issued to 6D, 14.1 issued at -- if you did it that way, no problem. Didn't do it that way, and so the question I have is who bears the cost of the screwup?

MR. JANEY: Well --

THE COURT: Is the remedy some sort of rescission or is the remedy just give me the 17 million shares, and CleanTech, you can either sue the lawyers who wrote this thing, or you can just learn a valuable lesson for future business transactions? I don't know. I'm not sure I'm going to be able to resolve that on motion to dismiss.

MR. JANEY: Right. We won't resolve it on motion to dismiss, but ultimately, your Honor, it's our position that would get to it. But the comment that I would make, at least for today's purposes, is that the defendant cannot have it both ways. Defendant cannot say that they are a viable company represented by sophisticated counsel circulating these documents to the marketplace, accepting in monies from persons

like Dr. Cottam, an investment of almost a million dollars, and when they don't comply with the document that they put in his hand after accepting his money, say you were an accredited investor. Sorry, you should have read it more closely or you should have gone and searched and looked, and you should have understood and maybe some thought outside of their head but that's not how it works.

THE COURT: Right, but I guess their response to you is, look, if these guys had thought this through, then all they would have had to do was the reverse split a nanosecond after the transactions took place. Great, you get your 17 million shares, and then they reduce it down. But I think the point is that this wouldn't have been hard to fix.

MR. JANEY: The issue, your Honor, what I would further submit, is that the issue of the miscalculation is only the beginning of the problem in the case. Right?

THE COURT: Maybe. I tell you, though, it doesn't sound to me like fraud. It sounds like incompetence or just an honest mistake, but it doesn't sound like fraud.

MR. JANEY: Well, this is where, going back to your Honor's --

THE COURT: Fraud would have been this, Mr. Janey. Instead of having 500 million shares as capitalization, you had 2 billion, and still give you 17 million out of that.

MR. JANEY: I'm not --

THE COURT: That would have been fraud it seems to me, arguably. It would have supported an inference of fraud. Here, what you're saying is that they defrauded you into doing this transaction, which got you no less than what you would have gotten had the transaction been done correctly.

MR. JANEY: There are other events, though, that are surrounding this case.

THE COURT: How are you worse off? I don't understand. It seems to me you can only do better, and what I would say is maybe he should do better because that's what the language says. I think in order to plead scienter, you have to be able to articulate the theory whereby you're doing worse, and I don't see how you're doing worse.

MR. JANEY: For example, your Honor -- and not with respect to the doing worse, but getting to the fraud issue. Your Honor is certainly aware that the original complaint named William Uchimoto in the case. There is a large sort of ether that's circulating some of the underlying facts.

I believe, as we lay out in the complaint and attach as appendices to the complaint, it is certainly put forth from the SEC complaints that Mr. Uchimoto was, one, the counsel to CleanTech. He was also the CleanTech to Benjamin Wey. That case is now, the SEC action, is now in its second amended complaint.

We submit that more will come out of the FINRA case as

to the connectivity on some of these things. The issues, discussions around restrictions, how the restrictions were discussed and conveyed to Dr. Cottam both from the issuer and from Radnor, and that's one of the reasons, quite frankly, that we agree with counsel that we're willing to, after the motion to dismiss is resolved, we certainly believe that the case will continue.

And on that premise, to stay the District Court action pending the FINRA arbitration because there, we believe that will be more that we understand from discovery in that case on the sorts of questions your Honor is now asking.

THE COURT: All right. Well, look, as I sit here now, and I'm not ruling, it seems to me that the fraud claim is a heavy lift. It seems to me that the contract claim is likely in denial on the motion to dismiss. I don't know what the parties contemplated in the event that what's at the bottom of Page 2 was not complied with.

I don't know what remedies they contemplated. I don't know if there was any discussion about that. I think that would require some extrinsic evidence. And it's not obvious to me that it's the Court's job to fix this problem because if you had gone the other way, if you had, at the time of the maximum offering and the transactions taking place, you had more than 536 million shares, I think clearly the plaintiffs here would have either been able to get out of this transaction all

together, or they'd have a breach of contract claim.

The problem here is not that they breached the contract, it's that you breached your own contract. Again, I can't imagine why CleanTech would arrange their affairs so that they've got less than 536 million shares since that can only hurt them in the exchange. But I'm not sure what the remedy is when that's what they did because, certainly, the plaintiffs didn't breach the agreement. Right?

MR. FLOCOS: I think, your Honor --

THE COURT: Are you arguing that they breached the agreement? Are you bringing that --

MR. FLOCOS: No.

THE COURT: You're not bringing a Counterclaim for a breach of contract by them, are you?

MR. FLOCOS: There's been no contemplation in my mind about a Counterclaim --

THE COURT: Because they didn't do anything.

MR. FLOCOS: -- for breaching the agreement. We certainly agree with your Honor on the fraud count. I don't think there's anything that remotely rises to the level of scienter, and I won't belabor that. I won't argue that.

THE COURT: There's some other problems, as well, that you raise.

MR. FLOCOS: There are some other problems. That's set forth in our premotion letter, and I won't belabor that

here. On the contract claim, I appreciate your Honor's point about the agreement not specifying a remedy, but I think the loss applies a remedy if there is a legal wrong. And when you have a public -- when you have a transaction that is predicated, I mean, yes --

THE COURT: But it's not. I just can't read this document and say it is predicated on them getting a percentage as opposed to a raw number of shares. That's what you're saying. You're saying that if you actually have a larger number at the bottom of this list on Page 2, that their 17 million shares should go up or down, depending on what that number is as a percentage, but it doesn't say that.

If you wanted to monkey around with the 266 million shares issued to 6D, or you wanted to monkey around with the seven million in shares that were for post-cancellation public shares, I think the argument is you can do that, I suppose. But you don't get to monkey with the 17 million number, the raw number that is designated for investors in the offering because that's what you told them they're going to get. They're going to get --

MR. FLOCOS: I don't think anyone is -- when you have a subsequent, publicly announced SEC-filed reverse stock split, in my mind, that's not monkeying with the numbers. That's an adjustment that when Dr. Cottam was told that he was going to get 50,000 shares and then subsequently there was a reverse

stock split, it seems to me that any reasonable investor would have to understand that you're not going to get your original 50,000 shares. You're going to get that adjusted by the subsequent reverse stock split.

THE COURT: But that isn't what the agreement says. That's not what the agreement says.

MR. JANEY: It does not say that.

MR. FLOCOS: It does not say that, but a reasonable investor could only come to that conclusion.

THE COURT: Look, I'd love to see the cases that say that, but I don't think that's obvious from the way this is written. If you wrote this -- not you, but if this was written in terms of percentages, that the CleanTech stock will be capitalized in the following percentages, then, yes, you're home free. But I don't know that the listing of these raw numbers to the penny, basically, 266,787,609 shares to 6D.

I mean, it is carefully calculated as to what these stocks are, and it's not saying as of today, June 17th, and they're subject to change. It says as of, basically, the date of the transactions, this is what the capitalization will be, and so I think there's more than a good argument here that the plaintiffs believe they were entitled to the 17 million shares, which is a one-for-one ratio based on the offering. Right? The offering is going to be 17 million shares of 6D Acquisition, right?

MR. FLOCOS: Your Honor, I'm just -- I'm just restating my position at this point.

THE COURT: I think it's 340 units, right?

MR. FLOCOS: Apparently, he believed he was entitled to what we view as a pretty obvious mathematical windfall. We disagree and don't think that we even need to have discovery about that, but if your Honor disagrees, that's fine. We can bring our motion certainly on the 10B claim.

We will take your Honor's comments into consideration regarding whether we bring a motion on the contract claim, but our position is, as I have stated, indeed, to interpret this agreement in the fashion advocated by the plaintiff, yes, I agree. Read literally, that's what it says, but it couldn't have been -- he got what he paid for. He could not have been entitled to what was a very large windfall.

THE COURT: No, but I think, again, we're going in circles.

MR. FLOCOS: Right.

THE COURT: What he's saying is I bargained for a one-to-one stock exchange on the units that I purchased being for -- one-to-one for the 17 million shares that are designated in this agreement. I think I've got it. Maybe I'm totally wrong on the facts, and correct me if I'm wrong, Mr. Janey, but I think it is 340 units, each unit worth 50,000 shares at $15,000 per unit?

MR. JANEY: That's correct.

THE COURT: So he was buying shares in a particular number, and his understanding, based on this agreement, is that he's going to get a one-for-one exchange on CleanTech shares, or actually CleanTech shares that are morphed into 6D Global shares, but it's a numerical exchange. It's not a ratio exchange. So anyway, I think we all get it; so let's just talk about this briefing schedule then.

MR. JANEY: We've conferred on the briefing schedule, your Honor, from plaintiff's perspective. If it's amenable to the Court, we certainly have conferred.

THE COURT: What's the schedule that you've come up with?

MR. FLOCOS: It would be our -- the motion to dismiss would be served not later than September 21st.

THE COURT: Okay.

MR. FLOCOS: And the opposition would be due on October 12th, and then the reply --

MR. JANEY: On the 26th of October.

MR. FLOCOS: -- that would be due on the 26th.

THE COURT: Okay. That's fine with me. You may, in light of what I've said today, want to think about what you're going forward on. I'm not trying to talk you out of anything, but I do think, as I sit here now, I think it's highly unlikely I'm going to be granting the motion to dismiss across the

board.

I think there's a very strong likelihood I'm going to be dismissing the fraud claims, as this thing is currently pled. I think the issue for me is whether I should be staying discovery in the interim, and I'm not inclined to, since I'm pretty confident that the contract claim is going forward. At the very least, I think some discovery as to what the parties contemplated would be the remedy for what ended up happening here, which is a different capitalization in CleanTech at the moment of the transactions.

MR. JANEY: Plaintiff would agree with that, your Honor. We would submit --

THE COURT: I think that's probably pretty discrete discovery. I think there must be only two or three people who would even have an opinion on this.

MR. FLOCOS: You took the words out of my mouth. If there is to be -- I mean, obviously, we'd like your Honor to take a look at the motion before we reach the question of the discovery stay, but if there is going to be discovery, I think it would be pretty discrete.

THE COURT: I think it will be discrete; so maybe, Mr. Janey, if we stay it, what's the big deal because you've still got the arbitration going and we can quickly catch up if I rule as likely as I'm going to rule.

MR. JANEY: Sure.

MR. FLOCOS: But that's our view of the world, your Honor, in a nutshell.

THE COURT: This is a pretty quick, as these things go, schedule for the motion. I've already telegraphed pretty well, at least as far as pre-motion conferences go, what I think is likely to happen. I haven't ruled because maybe you'll show me some case that say, no, no, courts should fix all the problems that lawyers have gotten themselves into.

I think some judges might be more open to that than others. I'm generally not. I don't believe I'm a fixer. I just think it's not really for courts to do that, especially when it's sophisticated parties. But if the Second Circuit says, oh, no, you've got to fix these things and not resort to extrinsic evidence; instead, just use your best guess as to what you think would be fair, I guess I'll look at that authority, but I don't think that really is the state of the law.

So let's stay discovery. Once I rule, I'll then say, great, you tell me what discovery you need, and we'll know what we're shooting at at that point. And in the meantime, maybe we'll have some feedback from the arbitration which might be relevant. Who knows?

MR. JANEY: Okay. Thank you, your Honor.

THE COURT: All right. So let's do this. I will issue a short order memorializing these dates that you just

gave me, and then we'll take it from there.

Let me say that this was a pleasure. It was an interesting issue, well-lawyered with lawyers who are very respectful and smart and responsive. It's a shame that I'm thanking you for this. You would think that that should just be always the way it is. Not always. So anyway, thanks. I enjoyed it.

MR. JANEY: Thank you, your Honor.

MR. FLOCOS: Thank you, your Honor.

THE COURT: Okay. If anybody needs a copy of this transcript, you can take it up with the court reporter now, or later through the website. Okay.

(Adjourned)